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TO RUEHC/SECSTATE WASHDC IMMEDIATE 9742  
INFO RUEHZS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS PRIORITY  
RUEHBY/AMEMBASSY CANBERRA 2878  
RUEHLM/AMEMBASSY COLOMBO 1182  
RUEHKA/AMEMBASSY DHAKA 1151  
RUEHNE/AMEMBASSY NEW DELHI 2084  
RUEHKO/AMEMBASSY TOKYO 2337  
RUEHWL/AMEMBASSY WELLINGTON 2928  
RUEHHK/AMCONSUL HONG KONG 2865  
RUEHPT/AMCONSUL PERTH 1020  
RUEHLMC/MILLENNIUM CHALLENGE CORP 0063  
RUEAIIA/CIA WASHDC  
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SUBJECT: CONSTITUTIONAL COURT: NEW JUSTICE SELECTION PROCESS

REF: 07 JAKARTA 000821

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11. SUMMARY: (U) The first 5-year term of the nine Constitutional Court justices ends August 15 and three Constitutional Court justices are retiring. Each of the three branches of government is involved in selecting replacements for the Constitutional Court, which is an important player in regional and national elections. President Yudhoyono (SBY) is closely overseeing the selection process for the executive branch's nominees. END SUMMARY.

STILL A YOUNG INSTITUTION

12. (U) Although the Constitutional Court is one of the judiciaries stipulated in the 1945 Constitution, it did not exist independently until it was separated from the Supreme Court in 2003. The court's first term ends on August 15, marking the first turnover on the bench. The nine justices on the Constitutional Court are appointed equally by the DPR, the Supreme Court and the President, each for a term of 5 years. They may be re-appointed for one subsequent term.

13. (U) The Constitutional Court will play an important role in the upcoming presidential and legislative elections in 12009. Among other issues, it has jurisdiction over election result disputes, the dissolution of political parties and laws regarding political participation. Already, its recent ruling on August 4 that incumbent governors, regents and mayors were not required to resign to seek re-election will have significant impact on the regional elections. So far, the Constitutional Court has maintained a reputation as a professional body (reftel) generally immune from political

influence.

#### HOUSE OF REPRESENTATIVES (DPR) CALLS FOR A PUBLIC PROCESS

¶3. (U) Because the law gives no guidance regarding the Constitutional Court justice selection process, the appointment process (by the executive branch and the Supreme Court) is widely perceived as the prerogative of the President and the Chief Justice. In January 2008, however, Trimedya Panjaitan, head of the DPR Judicial Commission, asked that the DPR, the Supreme Court and the executive branch conduct the selection process in a transparent and public manner.

#### SOME MORE TRANSPARENT THAN OTHERS

¶4. (U) On March 14, the DPR appointed their three candidates to the Constitutional Court after undergoing an extensive and public selection process. The head of the DPR judicial commission stated that the two incumbent justices, Prof. Jimly Asshiddique (chief) and Prof. Moh Mafud MD, were not required to submit to the selection process as they remained eligible for re-appointment to the Court. Before settling on DPR member Akil Mochtar for the third court seat, the DPR commission opened registration for three nominees from each of the political parties in the DPR. DPR Commission III then narrowed the field of candidates to 18 (three DPR members, two sitting Constitutional Court justices and the remainder from a variety of law professions) and evaluated them based on a written test and oral interview. Before the final selection, the DPR committee conducted a "fit and proper test" of the final candidates, including the two incumbents, to determine if they were able to carry out their duties as

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justices of the Constitutional Court.

¶5. (U) The Supreme Court appointed three incumbents: Maruarar Siahaan, Arsyad Sanusi and Muhammed Alim. The incumbents told the press that there was no open selection process and that each had been called by Chief Justice Bagir Manan of the Supreme Court and asked to serve a second term.

#### SBY COMMITS TO TRANSPARENCY

¶6. (U) On August 2, the executive branch's candidate selection committee released the list of 15 candidates for the Constitutional Court. The candidate selection committee, chaired by the President's legal advisor, Adnan Buyung Nasution, began seeking nominations in February 2008. SBY had Nasution publish the methodology of the selection process to ensure transparency. The selection committee solicited public input, is currently interviewing candidates and plans on August 9 to announce a select list of nine candidates, from which the President must choose three, by August 11.

¶7. (U) The executive branch's nominees include:

--Abdul Mukhtie Fadjar, incumbent on the Constitutional Court

--Achmad Sodiki, professor of law, Brawijaya University, Malang, East Java

--Ahmad Ali, professor of law, Hasanuddin University, Makassar, South Sulawesi; commissioner of the Indonesia-East Timor Commission on Truth and Friendship (CTF)

--Aminuddin Ilman, professor of law, Hasanuddin University, Makassar, South Sulawesi

--Amzulian Rifai, lecturer, Sriwijaya University, Palembang; Ph.D in constitutional law, Monash University, Australia

--Atip Latipulhayat, telecommunication law expert, Padjadjaran University, Bandung, West Java

--Latief Fariqun, Brawijaya University, Malang; deputy minister, prevention of gross human rights violations, Ministry of Women's Empowerment

--Dwi Andayani Budisetyowati, professor of constitutional law, Tarumanegara, Jakarta

--Fajrul Falaakh, constitutional law expert, Gadjah Mada University, Yogyakarta; outspoken critic of the Constitutional Court

--Harkristuti Harkrisnowo, director general, human rights affairs, Department of Law and Human Rights; law faculty, University of Indonesia

--Indriyanto Seno Adji (who later withdrew his nomination)

--Maria Farida Indrati, legislation expert, law faculty, University of Indonesia

--Ningrum Natasya Sirait, law faculty, North Sumatra University, research focus on business competitiveness

--Rudi Rizky, Faculty, Padjadjaran University, Bandung, West

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Java

-- Satya Arinanto, law faculty, University of Indonesia; former energy expert Constitutional Court

POSITIVE RESPONSE

18. (U) Public reaction to the executive branch's selection process has been positive. Although the Community Alliance for the Constitutional Court has been critical of the Court in the past, their only criticism has been of the selection process and the limitation of public input to one day--but not of the results. The high caliber of the government's list of candidates and the transparency of the executive branch candidates' selection process bode well for the court's professionalism in the future.

HUME